

REMARKS

Reconsideration and allowance of the application because of the forgoing amendment and for other reasons, are respectfully requested. Withdrawal of the FINAL is deemed in order.

Claims 21-42 and 44-51 are ending in the application. All were finally rejected.

Claims 21-33, 38-42 and 44-51 were finally rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement, the Examiner alleging that the "claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 21, 28, 38 and 44, the subject matter 'deriving its lift in flight from forces resulting from its motion through air', as now amended, is not supported by the original specification and therefore, now constitute New Matter."

Applicant has amended the Specification above to more clearly comply with the written description requirement that "airborne" means "deriving its lift in flight from forces resulting from its motion through air". This definition is consistent with Webster's New Collegiate Dictionary Copyright (C) 1977 by G. C. Merriam Co. definitions for "airborne": "1. supported wholly by aerodynamic forces; 2. transported by air". Thus applicant submits that the invention was described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Other references in the Specification support this interpretation of "airborne".

Applicant urges that claims 21-33, 38-42 and 44-51 comply with the written description requirement.

Claims 21-33, 38-42, and 44-51 were finally rejected under 35 USC 112, second paragraph, as being indefinite, the Examiner observing, inter alia, that regarding "claims 21, 28, 38, and 44, it is not clear whether the product derives its lift in flight from forces resulting from its motion through air". Reconsideration is requested in view of applicant's amendment of the Specification to provide a definition for "airborne", one that accords with Webster's New Collegiate Dictionary. The product derives its lift in flight from forces resulting from its motion through air.

Regarding claim 28, the Examiner observed that "it is not clear whether the fins act as a ski when the thin fins extends upwardly from a surface of the wider rear end and acts as a surfboard when the thin fins extends longitudinally from a surface of the wider rear end." As set forth in claim 28 of the Amendment dated October 16, 2006 and filed October 18, 2006 (postcard receipt) : "and thin fins extending upwardly when used as a ski and downwardly when used as a surfboard and longitudinally"

The Examiner also observed: "Further, it appears that 'that are upwardly when the board is attached'" is a method step and it is not clear how the phrase further structurally define the claimed apparatus'. Applicant urges that the limitation requires that the fins must extend upwardly when the board is attached. This is a functional and structural statement, and believed proper.

Regarding claims 29-32 , the Examiner observed that "it is not clear how the limitation 'when the board is attached' further structurally limit the claim". Applicant urges that the claims further structurally limit the claims by requiring that "the surface that is upwardly when the board is attached to the recreational product", "has control elements on its upper surface for engagement by the rider".

Regarding claim 34, the Examiner observed that "the phrase 'for receiving an attachment rendering the body the wing of a recreational vehicle' is confusing". Applicant apologizes for any confusion but believes the phraseology does say that that the body is rendered "the wing of a recreational vehicle" when the body "central rearward

"portion" receives an attachment. If the Examiner strongly feels about the matter, applicant is amenable to an Examiner's Amendment to the same effect.

Regarding claim 41, the Examiner observed that "it is not clear how the central longitudinal fin is connected". Claim 38 specifies inter alia: "the first section having longitudinally-extending control fins on its underside for withstanding rugged or slow turns in water and air". Claim 41 merely locates one longitudinal fin. It is connected to the underside of the first section.

Claims 21-32, 34-36, 38-42 and 44-51 were rejected under 35 USC 102(b) as being anticipated by either of Zistl (DE4332216A) or Clayton (US Patent 4,898,345) or Rock (US Patent 5,152,705). Reconsideration is requested. None of the references teach applicant's claimed invention.

Zistl discloses a sailboard employing variously-angled fins for stability in different water conditions.

Clayton discloses a skyboard for riding air currents (like surfboards for riding waves of the ocean). It has a pair of front wings and a pair of rear wings on its lateral sides, a pair of fins on its underside and a pair of foot or shoe binders on its upper surface for the rider's feet or shoes. It functions like a glider, except that it is guided by rider standing on it (like the surfboard). A parachute may be attached to it, and triggered to save the skyboard during falling, for reuse. The rider may wear a parachute to save himself in the event of trouble. The pair of front side wings and rear side wings may be removably attached to the lateral sides of the skyboard, to facilitate transportation.

Rock elongated discloses surfboards and wakeboards having downwardly extending sets of movable fins at their front and rear ends which interact via water flow under the board to lower or raise the other.

On the other hand, claim 21 (and its dependent claims) is directed to a rider recreational product having a wing section and a fuselage or tail section for skimming on water and flying through the air aerodynamically and separable into two sections, comprising a first section constituting the wing of the product and deriving its lift in flight from forces resulting from its motion through air and independently usable as a rideable element, and a second section constituting the fuselage or tail section of the product and independently usable as a surfboard or ski. None of Zistl, Clayton, or Rock teach "a second section constituting the fuselage or tail section of the product and independently usable as a surfboard or ski", or alternatively, "a first section constituting the wing of the product and deriving its lift in flight from forces resulting from its motion through air and independently usable as a rideable element".

Thus claim 21 and its dependent claims 22-27 are patentable over each of Zistl, Clayton, and Rock, for several reasons each.

Claim 34 (and its dependent claims) are directed to a device comprising a thin, wide body usable as an aerodynamically-supporting wing of a waterborne and airborne recreational vehicle and independently as a rideable element, comprising a central front end portion, a wide rearward portion, and a central rearward portion having a rearward facing opening for receiving an attachment rendering the body the wing of a recreational vehicle. None of Zistl, Clayton, or Rock teach inter alia a body with a central rearward portion having a rearward facing opening for receiving an attachment rendering the body the wing of a recreational vehicle.

Thus, claims 34 (and its dependent claims 35-37) are patentable over each of Zistl, Clayton, and Rock.

Claim 38 (and its dependent claims) are directed to a rider recreational product having a wing and a fuselage or tail section for skimming on water and flying through the air aerodynamically and separable into two sections, comprising a first section constituting the wing of the product and deriving its lift in flight from forces resulting

from its motion through air and independently usable as a rideable element, and a second section constituting the fuselage or tail section of the product and independently usable as a surfboard or ski, the first section having longitudinally-extending control fins on its underside for withstanding rugged or slow turns in water and air. None of Zistl, Clayton, or Rock teach a two-section product comprising a first section constituting the wing of the product and deriving its lift in flight from forces resulting from its motion through air and independently usable as a rideable element, and a second section constituting the fuselage or tail section of the product and independently usable as a surfboard or ski. The claims additionally distinguish by requiring the first section having longitudinally-extending control fins on its underside for withstanding rugged or slow turns in water and air.

Thus, claims 38 (and its dependent claims 39-42) are patentable over each of Zistl, Clayton, and Rock.

Claim 44 (and its dependent claims) are directed to a rider recreational product having wings for skimming on water and flying through air aerodynamically comprising first parts constituting the wings of the product and deriving its lift in flight from forces resulting from its motion through air and engaging the water during skimming on water. None of Zistl, Clayton, or Rock teach a rider recreational product for skimming on water and flying through air aerodynamically, let alone a product comprising first parts constituting the wings of the product and deriving its lift in flight from forces resulting from its motion through air and engaging the water during skimming on water.

Thus, claims 44 (and its dependent claims 45-51) are patentable over each of Zistl, Clayton, and Rock.

Hence, none of claims 21-32, 34-36, 38-42 and 44-51 are anticipated by any of Zistl or Clayton or Rock, and should be allowed.

Claims 33 and 37 were rejected under 35 USC 103(a) as being unpatentable over either Zistl (DE4332216A) or Clayton (US Patent 4,898,345) or Rock (US Patent

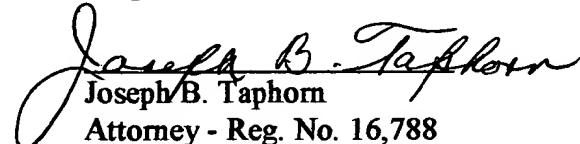
5,152,705) in view of Saghri (US Patent 5,498,184), the Examiner stating that "Saghri teaches that it is well known to provide a recreational board with inflatable material", and that "It would have been obvious [to] one having ordinary skill in the art to use inflatable material as taught by Saghri for the device of either Zistl or Clayton or Rock for the purpose of conveniently storing the device when deflated". Initially, it should be noted that the base claims 29 and 34 for dependent claims 33 and 37 are patentable over Zistl or Clayton or Rock, and that Saghri does not compensate for any of their other deficiencies. Secondly, Saghri does not teach that devices according to applicant's claims 29 and 34 can be satisfactorily modified for conveniently storing the device when deflated.

Thus, applicant believes that claims 33 and 37 are patentable over either Zistl or Clayton or Rock in view of Saghri.

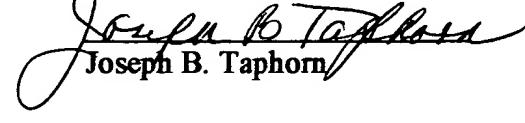
Applicant also urges that the FINAL Rejection should be withdrawn as being premature. While it is true that the application has been twice rejected, it is also true that applicant has been making an earnest effort to place the application in condition for allowance by amending the claims to distinguish over the cited art. Furthermore, a final rejection can be premature when a clear issue has not been reached. Ex parte Ulfstedt and Bengtsson, 109 USPQ 458; P.O. Sup.Ex. (1956). A clear issue has not been reached when new references, Zistl, Clayton, and Rock, are relied upon in the latest action.

Wherefore applicant believes that this application has been placed in condition for allowance, which favorable action at an early date is earnestly solicited. As a minimum, withdrawal of the FINAL rejection is in order.

Respectfully submitted,


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